IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL REVISION APPLICATION NO. 38 OF 2003
AND
CRIMINAL REVISION APPLICATION NO. 57 OF 2003

CRIMINAL REVISION APPLICATION NO.38 OF 2003

Shri Mauvin Godinho,
Major, residing at
Kamat Kinara,
Miramar, Goa. ... Applicant.

versus

State ... Respondent.

Mr. S. S. Kantak with Miss Rakhi Chodankar, Advocates for the Applicant.

Mr. A. P. Lawande, Special Public Prosecutor for the Respondent/State.

CRIMINAL REVISION APPLICATION NO. 57 OF 2003

State ... Applicant.

versus

Shri Mauvin Godinho,
Major, residing at
S-1 Bldg. No.20,
Kamat Kinara,
Caranzalem, Goa. ... Respondent.

Mr. A. P. Lawande, Special Public Prosecutor for the Applicant/State.

Mr. S. S. Kantak with Miss Rakhi Chodankar, Advocates for the Respondent.

CORAM: P. V. HARDAS, J.

DATED: 28TH NOVEMBER, 2003.

ORAL JUDGMENT

Both these Revisions are being disposed of by a common Order as they arise from the Order of the learned Special Judge, North Goa, Panaji, dated 23rd July, 2003, in Special Case No.4 of 2002.

2. The Applicant in Criminal Revision Application No.38 of 2003 is an Accused facing prosecution for offences punishable under Section 13(2) r/w 13(1)(e) of the Prevention of Corruption Act, 1988. The Applicant/Accused had filed an application claiming his discharge on the ground that no prima facie case had been made out against him. The learned Trial Judge, by the Order impugned in the present Revision granted benefit to the Applicant/Accused by adding Rs.3,00,000/-, which are proceeds of the sale of the Cielo car and Tata Sumo jeep as income of the Accused during the check period. The learned Special Judge, North Goa, Panaji, also granted benefit to the Accused in respect of Rs.5,00,000/- which the Accused claimed to be refunded by M/s Bashyam Associates, to be added to

the income of the Accused during the check period. The State being aggrieved by the Order of the learned Special Judge, North Goa, Panaji, adding an amount of Rs.8,00,000/- to the income of the Applicant/Accused during the check period, has filed Criminal Revision Application No.57 of 2003.

3. During the course of hearing, Mr. S. S. Kantak, learned Counsel appearing on behalf of the Applicant/Accused has very fairly stated that item at serial no.4 in the list of "Immovable Assets"(as on 16.5.2001) is not being challenged at this stage by him and accordingly, item no.4 of the aforesaid list is not the subject matter of argument in these proceedings. In respect of the other items specially the refund of Rs.5,00,000/- by M/s Bashyam Associates and the proceeds of the sale of the car, Mr. Kantak, learned Counsel appearing on behalf of the Applicant/Accused sought liberty to produce the Statement of Accounts of the Bank showing the amount of the cheque as having been credited. In respect of the other items on which discharge is sought, Mr. Kantak, learned Counsel appearing for the Applicant/Accused also sought liberty to produce other documents which would be of assistance to the Applicant/Accused. Since, the documents which are sought to be produced were not available before the learned Special Judge, North Goa, Panaji and also in

view of the fact that the Applicant/Accused wants to urge some other grounds in support of his plea, according to me, the proper procedure would be to remit the matter back to the learned Special Judge, North Goa, Panaji, for decision afresh.

4. Accordingly, both the Criminal Revision Applications are allowed. The Order impugned is quashed and set aside and the matter is remitted back to the learned Special Judge, North Goa, Panaji, for direction to decide it afresh. If an application is moved by the Applicant/Accused for production of the documents, the learned Special Judge, North Goa, Panaji, shall examine the same on merits and decide the same in accordance with law. It is needless to add that in the event, the Applicant/Accused is permitted to produce additional material, the right of the Respondent/State to further investigate would remain unhampered and if, an application is moved by the State seeking permission for further investigation, the learned Special Judge, North Goa, Panaji, shall decide the same in accordance with law.

5. Liberty is given to the Applicant/Accused to file an application for claiming discharge in respect of the other items of charge by urging additional grounds.

6. The learned Special Judge, North Goa, Panaji, while deciding the plea of the Applicant/Accused shall decide the same uninfluenced by any observations or findings recorded by the learned Special Judge, North Goa, Panaji, in the Order which is impugned in these Revisions.

7. Parties agree to appear before the learned Special Judge, North Goa, Panaji, on 10th December, 2003, at 2.30 p.m.

8. The learned Special Judge shall endeavour to decide the application for discharge as expeditiously as possible.

9. Accordingly, Criminal Revision Application Nos.38 of 2003 and 57 of 2003 are allowed on the aforesaid terms.

P. V. HARDAS, J.

RD.